IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21975 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVNAGAR WELFARE COOPERATIVE BANK LTD (IN LIQUIDATION) - Petitioner(s)
Versus
RAJESHWARI PRINTING PRESS - Respondent(s)

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Appearance :
MR TS NANAVATI for Petitioner(s) : 1,
MR GC RAY for Respondent(s) : 1,
MR HITESH N DAVE for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 05/07/2006

ORAL JUDGMENT

1. Rule. Learned advocate Shri Hitesh Dave waives service of rule on behalf of respondent.

2. I have learned advocates appearing for the

parties for final disposal of the petition.

3. The petitioner Co-operative Bank has preferred this petition against an order dated 24th February, 2005 passed by the Co-operative Tribunal in Misc. Civil Application No. 83/05 filed by the respondent herein.

4. Against the respondent, the petitioner bank had filed a Lavad Suit before the Board of Nominees being Lavad Case No. 673/99. The suit was for recovery of sum of Rs.8,42,046.32 ps. It is the case of the petitioner bank that the respondent partnership firm had borrowed certain amounts from the petitioner but never returned against the said borrowings. The Lavad Suit came to be filed for recovery of the said amount which calculated the principle lending with interest calculated till the date of filing of the suit.

5. After permitting the parties to lead evidence the Board of Nominees passed judgment and award dated 14th October, 2004. The suit of the petitioner was decreed. The respondent was directed to pay a sum of Rs. 8,42,046.32 ps. with interest at the rate of 16% from the date of the suit. The respondent preferred an appeal against the said order. Since the appeal was belated, a delay condonation application was also filed. The Tribunal by separate order dated 13th October, 2005 condoned the delay. This order of condonation of delay is not in challenge before this

Court, what is however challenged is an order dated 24/2/2005 by which the Tribunal was pleased to grant unconditional stay against the award of the Board of Nominees.

6. Learned advocate Shri Nanavati for the petitioner submitted that the Tribunal ought not to have granted unconditional stay when the respondent was facing a money decree. He submitted that the reasons indicated by the Tribunal in the impugned order would not justify granting of unconditional stay.

7. On the other hand learned advocate Shri Dave for the respondent opposed the petition. He took him through the judgment of the Board of Nominees. His attempt was to demonstrate that the decision of the Board of Nominees was vulnerable and that there were no written agreement or other documents establishing the averment of the bank that the respondent was granted loan facility. He submitted that the respondent also raised the question of limitation and non-joinder of the necessary parties.

8. Having heard learned advocates appearing for the parties, I find that though there could have been stay against execution of the order passed by the Board of Nominees, the same should not have been made unconditional. The respondent was facing money decree. The Board of Nominees had given detailed reason for allowing the suit in favour of the

petitioner bank. It was found that there was substantial contemporaneous record which would demonstrate that the respondent was given facility of loan by the petitioner and no repayment was made by the respondent. In view of this, the stay ought not to have been unconditional. All contentions of the respondent including those of limitation and non-joinder of necessary parties were considered by the Board of Nominees and surely be reconsidered by the Tribunal at the time of hearing of the appeal that by itself however would not justify granting of unconditional stay.

9. Under the circumstances, in view of the above observations this petition is allowed by providing that there shall be stay against the order of the Board of Nominees on the condition that the respondent shall deposit a sum of Rs. 2 lacs with the petitioner bank within a period of four weeks from today. I have taken into account the principle sum demanded and decreed by the Board of Nominees as well as the nature of defences put forth by the respondent. Needless to say, I have not expressed any conclusive opinion on the rival contentions. In case the respondent fails to deposit the sum as directed above stay against the award of the Board of Nominees shall automatically stand vacated. It will be open for the petitioner to request for early hearing of the appeal. With these directions, the petition is disposed of. Rule made absolute to the above limited extent. No costs.

(Akil Kureshi, J.)

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